IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1664 of 1990

with

SPECIAL CIVIL APPLICATION No 2287 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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J J CHAVDA

Versus

SECRETARY

Appearance:

MS SEJAL K MANDAVIA for Petitioners in both petitions.

Mr. R.C.Kodekar, ASSTT. GOVERNMENT PLEADER for Respondents in both petitions.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/09/2002

COMMON ORAL JUDGEMENT

A common question is involved in both these petitions and hence they are heard together and disposed of by this common judgment.

2. The learned counsel for the petitioners has pressed Special Civil Application no. 2287 of 1990 on behalf of the petitioner no.1 only and he has not pressed the petition on behalf of the petitioner no. 2 Baldevbhai C. Vaghela. Accordingly, Special Civil Application No. 2287 of 1990 is dismissed as not pressed in so far as petitioner no. 2 Baldevbhai C Vaghela is concerned.

3. The petitioner Maheshbhai Gandabhai Prajapati has passed 9th standard, whereas required qualification for the post of a peon is only 4th standard. The petitioner no. 1 was called for the interview for the post of peon by a letter dated 12th December, 1986. After the interview on 16th December, 1986 the petitioner was appointed as a peon on clear vacancy by an order dated 4th May, 1987 on purely temporary basis for a fixed period from 5th May, 1987 to 11th May, 1987. The petitioner Maheshbhai Prajapati continued in service from 5th May, 1987 till 16th March, 1990 by various appointment orders running into 27 orders by creating artificial breaks for a few days. But the petitioner was not given the benefits like leave etc. or any other allowances nor the petitioner was given the salary for public holidays. The petitioner served the respondent with utmost satisfaction. Though the petitioner had worked like a full time employee as a peon, he was paid consolidated monthly salary of Rs.330.50 ps. upto 14th March and thereafter at the rate of Rs.450/- per month. The petitioner made several oral requests to the higher authorities for regularization of his services, but the respondent orally asked the petitioner not to attend the duties as his services were not further required with effect from 15th March, 1990.

4. In the same manner, the petitioner J.J.Chavda of Special Civil Application no.1664 of 1990 was employed as a peon on ad hoc basis on monthly salary of Rs.450/- for a period of 29 days every time and he was continued in service from 1st January, 1984 for about seven years as class IV employee. He was also denied other emoluments and benefits. The services of the petitioners were terminated by an oral order with effect from 5.3.90.

5. The petitioners have therefore, filed the present petitions and have challenged the oral orders of termination passed by the respondent.

6. Aaffidavits-in-reply have been filed in both the petitions. It is stated therein that no legal or fundamental guaranteed to the petitioners have been violated by the respondent. Therefore, these petitions are not entertainable. The petitioners have not exhausted efficacious and alternative remedy. Hence, on these ground also, these petitions are not maintainable. The petitioners' services were terminated under order dated 5.3.90 as they were working as temporary peons on part time basis. No doubt, they have continuously worked under the respondent for a long period. After following regular procedure, four peons were appointed on 7.2.90, 19.2.90 and 21.2.1990 and it was not considered necessary to avail the services of the petitioners. Hence, the impugned orders were passed for relieving the petitioners. The petitioners were never given regular appointment to the post of peon and they were only working as part time peons and they have no right to continue in service and have also no legal right to be regularized in service as peons. The artificial breaks in service of the petitioners have been denied, but the details with regard to the period when the petitioners were purely temporary and ad hoc basis as part time have been given in the Annexures. It was made clear to the petitioners that whenever there would be any need for their services or whenever there would be a shortage of peons, they will be given appointment and their services will be utilized. The petitioners were appointed to work on part time basis and they were working for six hours a day on purely temporary and part time basis. For giving regular appointment to a person as a peon, names of suitable candidates were invited from the office of the employment exchange and Social Welfare Officer and after interview, suitable candidates were appointed on regular basis.

7. Heard the learned counsel for the parties and the learned Assistant Government Pleader at length and perused the relevant papers on record.

8. The contention of the learned counsel for the petitioners is that the oral orders terminating the services of the petitioners passed by the respondent are arbitrary and against provisions of Bombay Civil Service Rules and constitutional provisions provisions of Articles 14 and 16 of the Constitution and in violation of principles of natural justice as other persons

similarly situated have already been absorbed in regular services, but the petitioners have not been absorbed. Moreover, their services have been terminated by oral order, saying that their services were not further required by the department. The petitioners have already completed more than 240 days in a year, hence, their services cannot be terminated, more so, by oral orders. This Court as well as the Apex Court have discouraged part time or ad hoc employee appointed on 29 days appointment basis who have worked satisfactorily for long time which denied the legal right of employees. The learned counsel for the petitioner relied on the following authorities (1) In the case of Vipul S.Baxi and another vs. The State of Gujarat and others reported in 1988(1) GLH, UJ, 42. In the said case, the services of the petitioners who had put in five or six years of service, were terminated on the ground that their names were not called from the employment exchange. Therefore, their appointment were irregular and this Court has held that the employees who have put in considerable service should not be made to suffer on account of some mistake of the department and the orders terminating the services were quashed and set aside by this Court.

(2) In the case of Ghanshyam M. Pandya vs. State of Gujarat and others reported in 1985 GLH, UJ,51. The appointment given for 29 days basis-42 appointment orders were issued during the period of four years with artificial breaks in service, but the petitioner continuously worked as a peon from the date of his appointment till his services were terminated by an oral order. In the said case, this Court has held that the action of the respondent terminating the services was arbitrary and this Court directed for reinstatement with continuity of service.

(3) In the case of Karnataka State Private College Stop-gap Lecturers Association vs. State of Karnataka and others reported in 1992(2)SCC,29. In the said case, the Apex Court has held that having regard to the facts and circumstances, the following directions were issued.

(i) Services of such temporary teachers who have worked as such for three years, including the break till today shall not be terminated. They shall be absorbed as and when regular vacancies arises.

(ii) If regular selections have been made the government shall create additional posts to accommodate such selected candidates.

(iii) The teachers who have undergone the process of

selection under the directions of the High Court and have not been appointed because of the reservation policy of the government be regularly appointed by creating additional posts.

(iv) From the date of judgment every temporary teacher shall be paid salary as is admissible to teachers appointed against permanent post.

(v) Such teachers shall be continued in service even during vacations.

(4) In the case of State of Haryana vs. Piara Singh reported in AIR 1992, SC, 2130 wherein a case of ad hoc/temporary government servant was considered and the Apex Court held that those eligible and qualified and continuing in service satisfactorily for a long time have a right to be considered for regularisation. Long continuity of service gives rise to a presumption about the need for a regular post. In such cases, government should consider feasibility of regularisation having regard to the peculiar circumstances with a positive approach and sympathy for the concerned person.

(5) In the case of Bhagwan Das and others vs. State of Haryana and others reported in 1987(4) SCC, 634, the Supreme Court has directed for absorption of part time employees who have worked for substantial period continuously.

(6) In the case of Karnataka State Private College Stop-gap Lecturers Association vs. State of Karnataka and others reported in 1992(2) SCC, 29, the Apex Court has directed for regularisation of ad hoc teachers who continued for 8 to 10 years and to continue them in service and regularisation with payment at par with regular teachers.

(7) The decision of the learned Single Judge of this Court dated 7.7.2000 in Special Civil Application No. 549 of 2000 wherein the order of discharge dated 4.2.2000 was quashed and set side in similar facts and circumstances of this case.

9. The contention of the learned Assistant Government Pleader on the basis of the material on record is that the petitioners have no legal right to continue in service. Even they are not entitled for getting temporary status and their appointments can be termed as back door entry which is not permissible in the facts and circumstances of the case. Even if they have completed 240 days, they have no right to be continued in service

as they have not been selected through regular procedure.

10. I have carefully considered the contentions raised by the learned counsel for the parties. The learned counsel for the petitioners has produced on record, a copy of the circular of the Finance Department circular no. PTE/1080-288-CH dated 26th December, 1980 regarding part time employees for conversion of pay into regular posts wherein it is mentioned that whenever part time employment has continued for three years, the head of department should make efforts as per prescribed recruitment Rules and Procedure for filling in posts to absorb an incumbent in regular posts. They may be available under his control and to replace the incumbent by a fresh part time employees and heads of the department were required to examine the need of continuing existing arrangement for part time employment with consolidated pay and to make proposal giving full justification for conversion of pay of such posts into regular posts, on the basis of the circular read with Finance Department resolution dated 24th March, 1976. This Court in Writ petition being Special Civil Application no. 549 of 2000 in similar circumstances passed an order holding that the petitioner of that petition was appointed as a part time employee for a period of 29 days on probation and he was being paid consolidated salary of Rs.500/- per month. The petitioner's name of that petition was sponsored by employment exchange and she was selected for such appointment after interview. The arrangement continued till February,2000. In the month of December, 1999, the petitioner of that petition moved the petition claiming absorption in class IV service. In that petition, it was contended that the petitioner is eligible for appointment to class IV service as there has been a standing Government instruction to absorb part time servants in class IV service after having served as such for three years. The Government circular dated 26.12.1980 of the Finance Department was relied upon in that matter. According to the instructions in the circular, an attempt should be made to absorb part time employees who have worked three years continuously on permanent posts. Even then, the case of the petitioner was not considered by the department in that case. It was observed that the only intention is to absorb such employees if otherwise they are eligible and suitable, though it was also observed that the petitioner of that petition cannot claim absorption in clause IV service as a matter of right. On the basis of the facts and circumstances of the case, this Court quashed and set aside the discharge order dated 4.2.2000 in that case. The petitioner of

that case was directed to be reinstated immediately in service on the same service conditions. By the judgment and order date 7.7.200, it was also directed that the respondent no. 2 shall consider the case of the petitioner for appointment to the post of peon in consonance with the relevant recruitment rules and in accordance with law as and when the post of peon is required to be filled in.

11. In both these petitions, as stated by the learned counsel for the petitioners, the petitioners have served for more than 6 years and 15 years respectively and by way of ad-interim order of this Court, they are still in service. As per the circulars and Resolutions of the Government and various decisions of this Court as well as Apex Court, the part time employees who have worked satisfactorily and continuously for a long period, are required to be absorbed in regular service and their services are required to be regularized eventhough they were appointed on ad hoc basis in case they are eligible for the post. In the facts and circumstances stated above, I find great force and substance in the contention of the learned counsel for the petitioners that the petitioners are entitled to be continued and regularised in service and they are required to be absorbed or regularised in service forthwith as the petitioners are qualified and eligible and they are working on clear vacancies in the Legal Department of the State Government. As such, they should be absorbed and regularised in service with consequential benefits from the date of this judgment as the petitioners are working as part time for six hours or seven hours a day. As stated-in-affidavit in reply filed by the respondents, the consequential benefits cannot be given with retrospective effect from their joining service or from the date of filing of these petitions and the termination orders are required to be quashed and set aside.

13. In view of the above discussion and factual and legal position, these petitions are allowed. The termination or discharge orders passed by the respondents are hereby quashed and set aside. The respondents are directed to continue the petitioners in service. The respondents are further directed to regularise the services of the petitioners as peons forthwith with consequential benefits. However, the petitioners will not be entitled for seniority from the date of their respective appointments. The question of seniority of the petitioners will be considered and determined by the department from the date of their original appointment or from the date of their absorption

and regularisation in service, the dates on which they filed their respective petitions in this Court. Rule is made absolute to the aforesaid extent with no order as to costs.